

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
SHELBY DIVISION**

CRIMINAL CASE NO. 4:96cr53-2

UNITED STATES OF AMERICA,)

)

)

vs.)

)

)

ERIC WHEELER.)

)

)

ORDER

THIS MATTER is before the Court on the Defendant's *pro se* Motion to Stay Proceedings pursuant to Fed.R.Civ.P. 62(b) [Doc. 704] and Motion for Correction of Illegal Sentence [Doc. 711].

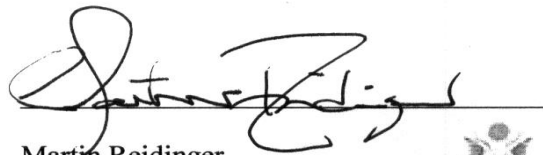
At the time that the Defendant filed the first motion to stay proceedings, he was represented by court-appointed counsel. [Doc. 692]. The Rules of Practice and Procedure of the United States District Court for the Western District of North Carolina provide that "the Court will not ordinarily entertain a motion filed by a criminal defendant who is still represented by counsel and has not formally waived his or her right to counsel in the presence of a judicial officer after being fully advised of the consequences of waiver." L.Cr.R. 47.1(H). That being the case here, the Court will not entertain this motion.

The motion, however, would not have been granted in any event. The motion was rendered moot when this Court ruled that the Defendant was ineligible for any sentence reduction pursuant to 18 U.S.C. §3582 due to the statutory mandatory sentence. [Doc. 707].

The motion to correct the Defendant's sentence [Doc. 711] is nothing more than an attempt to seek relief pursuant to 28 U.S.C. §2255. On January 22, 2013, the United States Court of Appeals for the Fourth Circuit denied the Defendant's motion for authorization to file a second or successive application for relief pursuant to 28 U.S.C. §2255. [Doc. 706]. This Court therefore has no authority to consider this motion. 28 U.S.C. §2255(h).

IT IS, THEREFORE, ORDERED that the Defendant's *pro se* Motion to Stay Proceedings pursuant to Fed.R.Civ.P. 62(b) [Doc. 704] and Motion for Correction of Illegal Sentence [Doc. 711] are hereby **DENIED**.

Signed: May 21, 2013


Martin Reidinger
United States District Judge

